

No. 67

AN ACT
RESPECTING POUNDS

BEING CHAPTER 272, R. S. O., 1897

AND SECTIONS OF THE

CONSOLIDATED MUNICIPAL ACT, 1903

IN REFERENCE THERETO

WITH NOTES OF DECIDED CASES, ETC.

By
JAMES MORRISON GLENN, K. C., LL. B.,
of Osgoode Hall, Barrister-at-Law.

PRICE, 25 CENTS

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THE MUNICIPAL WORLD, LIMITED



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An Act Respecting Pounds

Chapter 272, R. S. O., 1897.

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :

1. Until varied or other provisions are made by by-laws passed under the authority of section 546 of *The Municipal Act*, (a) this Act shall be in force in every township, city, town and incorporated village in Ontario. R. S. O., 1887, c. 215, s. 1.

Act may be superseded by by-laws under Revised Statutes c. 223, s. 546

[a] By-law No. 84, passed by the Township of Onondaga on 29th May, 1882, prohibited certain animals therein named running at large; and provided that "except between the 10th May and 1st December in any year," it should not be lawful for the owners of any other animals not heretofore mentioned or indicated, to allow or permit the same to run at large. A fine or penalty not exceeding \$5 was imposed for every offence, but the animals were not thereby to be relieved from the operation of any by-law relating to pounds or poundkeepers, or for any trespass or damage committed or done by them through their being permitted to run at large. The recovery of fines and penalties [not adding the words "and costs"] was directed to be under section 421, et seq., of *The Summary Convictions Act* with imprisonment, in the event of no distress, unless the fine or penalty and costs, including the costs of committal, be sooner paid. By-law No. 97, passed on 9th July, 1883, after reciting that the object was to prevent all animals of

2. The owner or occupant of any land shall be responsible for any damage caused by any animal under his charge and keeping, as though such animal were his own property, and the owner of any animal not permitted to run at large (b) by the by-laws of the municipality shall be liable for any damage done by such animal.

any age or description running at large at all seasons of the year, amended by-law No. 84, by striking out the words in italics. It was held that the by-law was not oppressive or unreasonable as extending to all seasons of the year, in that it was no wider than the statute under which it was passed. Municipal Act, 1883, section 492, sub-section 2. [Re Milloy and The Township of Onondaga. 6 O. R. 573.]

A municipal by-law, passed pursuant to The Municipal Act, enacted that certain descriptions of animals [naming them] and all four-footed animals known to be breachy, should not be allowed to run at large in the township; and provided for fixing the height of fences. The plaintiff's cattle strayed from the highway into the lands of the defendant, Williams, whose fences were not of the height required by the by-law. He distrained them and they were impounded, defendant Steeper being the poundkeeper. In an action of replevin it was held, that as the by-law did not affirmatively authorize these cattle to run at large by negatively providing that certain other classes of animals should not be allowed to do so, the plaintiff was liable at common law, and under R. S. O., 1877, ch. 195 [now R. S. O., 1897, ch. 284.] for the damage done, irrespective of any question as to the height of the defendant's fences. Crowe v. Steeper, 46 Q. B. 87.

A by-law of a municipality allowing cattle to run at large does not make it lawful for them to roam at will over or commit damage upon private property.

In replevin for a mare, defendant justified under a by-law of the township, enacting that the poundkeeper should impound any horse for unlawfully running at large, etc., delivered to him for that purpose by any person resident within the township; and that the person distraining should deliver to him at the same time duplicate written statements of his demand against the owner, and, if required by the poundkeeper, a written agreement, with a surety, to pay all costs in case the distress should prove illegal, etc. The plea alleged that the mare being taken while at large and doing damage in the township "was duly impounded by a lawfully authorized poundkeeper of said township," etc., and thereupon all proceedings were lawfully had, all steps taken, notices given, and times elapsed necessary to enable the poundkeeper to sell said mare, etc. It was held on demurrer, that the plea was bad, for not alleging that the mare was delivered to the poundkeeper by a resident of the township; and that this allegation was not supplied by the general averment that all proceedings were had, etc., which applied only to what took place after the "impounding." It was held also that the other requisites of the by-law, as to the statement of demand, the written agreement, and notices of sale, etc., were covered by the general allegation. [Rourke v. Morey, 36 Q. B. 546.]

It seems, that a by-law enacting that certain animals shall not run at large does not impliedly allow other animals not named to do so contrary to the common law. [Jack v. The Ontario, Simcoe and Huron R. W. Co., 14 Q. B., 328.]

[b] Cattle are at large within the meaning of the Act when the herdsman, in following one of the herd which has strayed, gets so far away from the main body that he is unable to reach them in time to prevent their loitering or stopping on the highway at its intersection with a railway when he sees

although the fence enclosing the premises was not of the height required by such by-laws. (c) R. S. O., 1887, c. 215, s. 2.

3. If not previously replevied, the pound-keeper shall impound any horse, bull, ox, cow, sheep, goat, pig or other cattle, geese or other poultry, distrained for unlawfully running at large, or for trespassing and doing damage, delivered to him for that purpose by any person resident within his division who has distrained the same; (d) or if the owner of geese or other poultry refuses or neglects to prevent the same from trespassing on his neighbors' premises after a notice in writing has been served upon him of

What animals
to be impounded

a train approaching. The question as to whether cattle are at large or not, need not, under all circumstances, be submitted to the jury. It is for the judge in that case, as in others, to say whether there is any evidence for the jury that the cattle were at large within the meaning of the Act. [Thompson v. Grand Trunk Railway Co., 22 A. R., 453.]

The owners of cattle running at large are liable for any damage occasioned by them, the council of the municipality has nothing to do with it. The fact that cattle are allowed to run at large by a by-law of the municipality, and that a tax is imposed on them, does not limit in any way the responsibility of their owners for any damage they may occasion.

[c] An action was instituted for impounding and selling plaintiff's horses. The plea was that the horses were damage feasant. Replication that by town meeting regulations, fences should be five feet high, and that defendant's fence not being that height, but ruinous and out of repair, the plaintiff's horses escaped out of his close into defendant's close without his knowledge or consent: Held good on general demurrer. [Ives v. Hitchcock, Dra. 247.]

A land owner in this country must fence against cattle. [Spafford v. Hubble, M. T. 2 Vict.]

A distraint of cattle damage feasant cannot be supported unless the cattle are taken at the time the damage is done; if they are driven out after doing damage, they cannot be seized on their re-entering for the former damage. [Graham v. Spettigue, 12 A.R. 261.]

On the question of the sufficiency of a fence according to township regulations, where cattle are distrained damage feasant, the award of fenceviewers is conclusive. [Stedman v. Wasley, E.T. 4 Vict.]

Defendant seized the plaintiff's oxen damage feasant in his wheat field, and being unable to find a poundkeeper, turned them loose near the plaintiff's gate. On the evening of the same day the defendant again seized them for doing damage to his meadow, and impounded them, giving a statement of his claim for damage to the wheat, but making no claim for injury to the meadow. It was held that the damage to the wheat had been abandoned, and that the impounding and sale of the oxen for the damage so claimed were illegal. The plaintiff forbade the sale, when defendant told the poundkeeper to sell, and that he would be responsible. It was held that the defendant and poundkeeper were both liable. [Buist v. McCombe, 8 A. R. 598.]

[d] The defendants by an agreement under seal with one S. acquired a right of user in certain lands for the purpose of pasturing their cattle. There was no demise, or right of distress, or anything in the agreement, to make the defendants tenants of S. There was, however, a covenant that S. would not allow his own animals, or those of others to enter upon the land in question. It was held that the defendants had no right under the agree-

Poultry.

their trespass, then the owner of such poultry may be brought before any justice of the peace and fined such sum as the justice directs. R. S. O., 1887, c. 215, s. 3. (e)

Notice to clerk
as to animals
impounded.

4. Where any animal has been impounded the poundkeeper shall, within twenty-four hours, deliver to the clerk of the municipality a notice in writing containing a description of the color, age and natural and artificial marks of the animal, as near as may be. 60 V., c. 45, s. 78.

ment to distrain the plaintiff's cattle damage feasant upon his land. It seems that that the defendants remedy, if any, was by action on the covenant against S. [Graham v. Spettigue, 12 A.R. 361.]

Animals cannot be impounded unless they are running at large, within the strict construction of the statute. It has been held that sheep grazing on private, unenclosed property in charge of a boy are not running at large. [Ibottson v. Henry, 8 O.R. 625, Q.B.D.]

A master is liable for the acts of his farm servant in impounding cattle in his absence, the servant acting within the general scope of his authority. [Spafford v. Hubble E.T. 7, Will. IV.]

In a plea of justification by a poundkeeper for taking a pig, where the justification was that the pig contrary to the township regulations, broke through a lawful fence, it was held necessary to allege that the fence was within that township, and to show the close in which the pig was trespassing at the time of seizure. [Carey v. Tate, 6 O.S. 147.]

A poundkeeper could not, under 3 Vic., chap. 21, detain and sell an animal seized by him for damage done to his own close, but only such as should "be brought to him" by some other party. [Brown v. Williams, 6 O.S. 656.]

In trespass against two for seizing cattle, one defendant justified as poundkeeper, and because the cattle were in the close of A. wrongfully, etc., A. took the said cattle trespassing and delivered them to defendant as a poundkeeper within his jurisdiction, and defendant impounded and afterwards sold them according to law; and the other defendant justified as having bought the cattle at the sale as the highest bidder. The plaintiff demurred generally to both pleas. It was held that the plea by the poundkeeper was bad, as it did not show that he received the cattle from a person within his division, or that the close was so situated; and the plea of the purchaser good, as he could not be liable to the plaintiff in trespass. [Clarke v. Durham et al, E.T. 3 Vict.]

The plaintiff's horse escaped from his stable and got into the defendant's pasture field, but was immediately pursued by M., the plaintiff's son-in-law, who saw it escape, and was leading it out of defendant's field, when defendant seized and detained it. The plaintiff replevied, and defendant avowed as for distress damage feasant. Held, that the horse, under the circumstances, was not distrainable. [McIntyre v. Lockbridge et al, 28 Q. B. 204.]

[e] The effect of secs. 2, 3, 6, 20 and 21 of The Act Respecting Pounds [R. S. O., chap. 215, now chap. 272], is to give the right to impound cattle trespassing and doing damage, but with a condition that if it be found that the fence broken is not a lawful fence, then no damages can be obtained by the impounding, whatever may be done in an action of trespass. Cattle feeding in the owner's enclosure, or shut up in his stables, cannot be held to be running at large when they may happen to escape from such stable or enclosure into the neighboring grounds. Ives v. Hitchcock, Drap. R. 247, commented on. [McSloy v. Smith, 260 O.R. 508.]

5. When the common pound of the municipality or place wherein a distress has been made is not secure, the poundkeeper may confine the animal in any enclosed place within the limits of the poundkeeper's division within which the distress was made. R. S. O., 1887, c. 215, s. 4.

When the common pound is not safe.

6. The owner of any animal impounded shall at any time be entitled to his animal, on demand made therefor, without payment of any poundage fees, on giving satisfactory security to the poundkeeper for all costs, damages and poundage fees that may be established against him, but the person distraining and impounding the animal shall, at the time of the impounding, deposit poundage fees if such are demanded, and within twenty-four hours thereafter deliver to the poundkeeper duplicate statements in writing of his demands against the owner for damages (if any) not exceeding \$20, done by such animal, exclusive of such poundage fees, and shall also give his written agreement (with a surety, if required by the poundkeeper) in the form following, or in words to the same effect :

Statement of demand to be made to poundkeeper by impounder.

"I (or we, *as the case may be*) do hereby agree that I (or we) will pay to the owner of the (*describing the animal*) by me (*A. B.*) this day impounded, all costs to which the said owner may be put in case the distress by me, the said *A. B.*, proves to be illegal, or in case the claim for damages now put in by me, the said *A. B.*, fails to be established."

Form of agreement with poundkeeper

R. S. O., 1887, c. 215, s. 5.

7. In case the animal distrained is a horse, bull, ox, cow, sheep, goat, pig, or other cattle, and if the same is distrained by a resident of the municipality for straying within his premises, such person, instead of delivering the animal to a poundkeeper, may retain the animal in his own possession, provided he makes no claim for damages done by the animal, and duly gives the notices hereinafter in that case required of him. R. S. O., 1887, c. 215, s. 6.

When animal may be retained by distrainer.

8. If the owner is known to him, he shall forthwith give to the owner notice in writing of having taken up the animal. R. S. O., 1887, c. 215, s. 7.

Notice to owner if known.

9. If the owner is unknown to the person taking up and retaining possession of the animal, such person shall, within forty-eight hours, deliver to the clerk of the municipality a notice in writing of having taken up the animal, and containing a description of the color, age and natural and artificial marks of the animal, as near as may be. R. S. O., 1887, c. 215, s. 8.

If unknown, notice to clerk of municipality

10. The clerk, on receiving such notice, shall forthwith enter a copy thereof in a book to be kept by him for that purpose, and shall post the notice he receives, or copy thereof, in some con-

Duty of clerk thereon.

spicuous place on or near the door of his office, and continue the same so posted for at least one week, unless the animal is sooner claimed by the owner. R. S. O., 1887, c. 215, s. 9.

If the animals
are worth \$10
or over.

11. If the animal or any number of animals taken up at the same time is or are of the value of \$10 or more, the distrainer shall cause a copy of the notice to be published in a newspaper in the county, if one is published therein, and if not, then a newspaper published in an adjoining county, and to be continued therein once a week for three successive weeks. R. S. O., 1887, c. 215, s. 10.

Notice of
sale.

When sale may
be made.

12. In case an animal is impounded, notices for the sale thereof shall be given by the poundkeeper or person who impounded the animal within forty-eight hours afterwards, but no pig or poultry shall be sold till after four clear days, nor any horse or other cattle till after eight clear days from the time of impounding the same. R. S. O., 1887, c. 215, s. 11.

If animal is not
impounded
but retained.

13. In case the animal is not impounded, but is retained in the possession of the party distraining the same, if the animal is a pig, goat, or a sheep, the notices for the sale thereof shall not be given for one month, and if the animal is a horse or other cattle, the notices shall not be given for two months after the animal is taken up. R. S. O. 1887, c. 215, s. 12.

Notice of sale,
unless redeemed

14. The notices of sale may be written or printed, and shall be affixed and continued for three clear successive days, in three public places in the municipality, and shall specify the time and place at which the animal will be publicly sold, if not sooner replevied or redeemed by the owner or some one on his behalf, paying the penalty imposed by law (if any), the amount of the injury (if any) claimed or decided to have been committed by the animal to the property of the person who distrained it, together with the lawful fees and charges of the poundkeeper, and also of the fenceviewers (if any), and the expenses of the animal's keeping. R. S. O., 1887, c. 215, s. 13.

Keeper to feed
impounded
cattle.

15. Every poundkeeper and every person who impounds or confines, or causes to be impounded or confined, any animal in any common pound, or in any open or closed pound, or in any enclosed place, shall daily furnish the animal with good and sufficient food, water and shelter during the whole time that such animal continues impounded or confined. R. S. O. 1887, c. 215, s. 15.

and may
recover the
value.

16. Every such person who furnishes the animal with food, water and shelter may recover the value thereof from the owner of the animal, and also a reasonable allowance for his time, trouble and attendance in the premises. R. S. O., 1887, c. 215, s. 15.

17. The value or allowance as aforesaid may be recovered with costs, by summary proceeding before any Justice of the Peace within whose jurisdiction the animal was impounded, in like manner as fines, penalties or forfeitures for the breach of any by-law of the municipality may by law be recovered and enforced by a single Justice of the Peace; and the Justice shall ascertain and determine the amount of such value and allowance when not otherwise fixed by law, adhering, so far as applicable, to the tariff of poundkeeper's fees and charges established by the by-laws of the municipality. (f) R. S. O., 1887, c. 215, s. 16.

In what manner such value may be recovered.

18. The poundkeeper, or person so entitled to proceed, may, instead of such summary proceeding, enforce the remuneration to which he is entitled in manner hereinafter mentioned. R. S. O., 1887, c. 215, s. 17.

Other mode of enforcing

19. In case it is proved by affidavit before one of the Justices aforesaid, to his satisfaction, that all the proper notices had been duly fixed and published in the manner and for the respective times above described, then if the owner, or some one for him, does not, within the time specified in the notices, or before the sale of the animal, replevy or redeem the same in manner aforesaid, the poundkeeper who impounded the animal, or if the person who took up the animal did not deliver such animal to any poundkeeper, but retained the same in his own possession, then any poundkeeper of the municipality may publicly sell the animal to the highest bidder, at the time and place mentioned in the aforesaid notices, and after deducting the penalty and the damages (if any) and fees and charges, shall apply the product in discharge of the value of the food and nourishment, loss of time, trouble and attendance so supplied as aforesaid, and of the expenses of driving or conveying and impounding or confining the animal, and of the sale and attending the same, or incidental thereto, and of the damage when legally claimable (not exceeding \$20), to be ascertained as aforesaid, done by the animal to the property of the person at whose suit the same was distrained, and shall return the surplus (if any) to the original owner of the animal, or, if not claimed by him within three months after the sale, the poundkeeper shall pay such surplus to the treasurer of and for the use of the municipality. R. S. O., 1887, c. 215, s. 18.

Sale how effected, etc., and purchase money, how applied.

20. If the owner, within forty-eight hours after the delivery of such statements, as provided in section 6, disputes the amount of the damages so claimed, the amount shall be decided by the majority of three fenceviewers of the municipality, one to be

Disputes regarding demand for damages, how determined.

(f) See note (h) on page 12.

named by the owner of the animal, one by the person distraining or claiming damages, and the third by the poundkeeper. R. S. O., 1887, c. 215, s. 19.

Fenceviewers
to view and
appraise
damage.

21. Such fenceviewers, or any two of them, shall, within twenty-four hours after notice of their appointment as aforesaid, view the fence and the ground upon which the animal was found doing damage, and determine whether or not the fence was a lawful one according to the statutes or by-laws in that behalf at the time of the trespass; and if it was a lawful fence, then they shall appraise the damages committed, and within twenty-four hours after having made the view shall deliver to the poundkeeper a written statement, signed by at least two of them, of their appraisal and of their lawful fees and charges. R. S. O., 1887, c. 215, s. 20.

Proceedings
where fence-
viewers decide
against the
legality of a
fence.

22. If the fenceviewers decide that the fence was not a lawful one, they shall certify the same in writing under their hands, together with a statement of their lawful fees to the poundkeeper, who shall, upon payment of all lawful fees and charges, deliver such animal to the owner, if claimed before the sale thereof, but if not claimed, or if such fees and charges are not paid, the poundkeeper, after due notice, as required by this Act, shall sell the animal in the manner before mentioned at the time and place appointed in the notices. R. S. O., 1887, c. 215, s. 21.

Liability of
poundkeeper
refusing to
feed animal
impounded.

23. In case a poundkeeper or person who impounds or confines, or causes to be impounded or confined, any animal as aforesaid, refuses or neglects to find, provide and supply the animal with good and sufficient food, water and shelter as aforesaid, he shall, for every day during which he so refuses or neglects, forfeit a sum not less than \$1 nor more than \$4. R. S. O., 1887, c. 215, s. 22.

Penalty for
neglect of
duty by
fenceviewers.

24. Any fenceviewer neglecting his duty as arbitrator as aforesaid shall incur a penalty of \$2, to be recovered for the use of the municipality, by summary proceedings before a Justice of the Peace upon the complaint of the party aggrieved or the treasurer of the municipality. R. S. O., 1887, c. 215, s. 23.

Recovery and
enforcement of
penalties.

25. Every fine and penalty imposed by this Act may be recovered and enforced, with costs, by summary conviction, before any Justice of the Peace for the county or of the municipality in which the offence was committed; and in default of payment the offender may be committed to the common gaol, house of correction or lock-up house of the county or municipality, there to be imprisoned for any time in the discretion of the convicting and committing Justice, not exceeding fourteen days, unless the fine

Imprisonment
in default of
payment.

and penalty and costs, including the costs of the committal, are sooner paid. R. S. O., 1887, c. 215, s. 24.

26. When not otherwise provided, every pecuniary penalty recovered before any Justice of the Peace under this Act shall be paid and distributed in the following manner: One moiety to the city, town, village or township in which the offence was committed, and the other moiety thereof, with full costs, to the person who informed and prosecuted for the same, or to such other person as to the Justice seems proper. R. S. O., 1887 c. 215, s. 25.

Application of penalties.

27. Every poundkeeper and every other person who, under the provisions of section 13 of this Act, distrains any animal, shall, on or before the 15th day of January in every year, file with the clerk of the municipality a statement for the year ending on the 31st day of December prior to that in which the statement is filed, showing:

Statement to be filed with clerk by poundkeeper or distrainer.

1. The number of animals impounded or distrained, as the case may be.
2. The number of animals sold and the amounts received.
3. The sum received as poundage fees and cost of keep by poundkeeper or party distraining.
4. The amount of damages paid by any party.
5. All disbursements and to whom paid.
6. Any other receipts and expenditures in connection therewith. 56, Vic., c. 47, s. 1 (26).

28. The said statement shall be certified to by the poundkeeper or the person distraining as a true and accurate statement for the year ending on the 31st day of December prior to that in which the statement is filed. 56 Vic., c. 47, s. 1 (27).

Statement to be certified by poundkeeper or distrainer.

29. Any poundkeeper or other person required to file such return, neglecting or refusing to file the same on or before the 15th day of January in any year, shall be subject to a penalty not exceeding \$10.00 to be recovered are other penalties under this Act. 56 Vic., chap. 47, s. 1 (28).

Penalty for neglect to comply with Act.

Powers of Municipal Councils

Consolidated Municipal Act, 1903, Secs. 537 and 546.

P O U N D S

537. The council of every township, city, town and incorporated village may pass by-laws, (1) for appointing pound-keepers, (g) (2) for regulating the remuneration, fees, charges and duties of such officers. (h)

By-laws for.

546. The council of every township, city, town and village, may pass by-laws (not inconsistent with the Statutes of Canada) respecting cruelty to animals :

Providing
pounds.

1. For providing sufficient yards and enclosures for the safe keeping of such animals as it may be the duty of the poundkeeper to impound.

[g] A poundkeeper is a public officer discharging a public duty, and is not liable for detaining a distress, unless he has done some act beyond his duty, whereby the owner of the things impounded suffered some particular damage not recoverable against the distrainer or party impounding ; or when, by going out of the line of his duty, he makes himself a party to some illegal act of the distrainers. [Wardell v. Chisholm, 19 C.P. 125.]

Defendant was in charge of the pound of the City of Toronto as poundkeeper, having so acted for seven or eight years. He had been appointed by the city commissioner at a yearly salary, which had been paid, until a short time before the act sued for [the impounding of plaintiff's pigs] when some question was raised as to the legality of his appointment. It appeared that after the seizure he had offered to release the pigs on payment of the pound charges only ; and, according to one witness, he had said he was not poundkeeper. He had not been appointed by by-law, nor given the requisite bond. The learned Judge of the County Court trying the case, without a jury, found that defendant was acting as poundkeeper in good faith, and believed, on reasonable grounds, that he was such poundkeeper. It was held that the finding was fully justified, and that the defendant was clearly entitled to notice of action. [Denison v. Cunningham, 35 Q.B. 383.]

[h] Councils have authority under this section to pass by-laws "for determining the compensation to be allowed for services rendered in carrying out the provisions of any Act with respect to animals impounded," etc., but such councils have no power to pass by-laws providing that a portion of such compensation shall be paid as a "bonus" to persons impounding animals, and another part received by the municipality to be applied toward paying the rental of the pound or otherwise.

2. For restraining and regulating the running at large or trespassing of any animals and providing for impounding them ; and for causing them to be sold in case they are not claimed within a reasonable time, or in case the damages, fines and expenses are not paid according to law (i)

Animals running at large.

3. For appraising the damages to be paid by the owners of animals impounded for trespassing contrary to the laws of Ontario or of the municipality.

Appraising the damages.

4. For determining the compensation to be allowed for services rendered in carrying out the provisions of any Act, with respect to animals impounded or distrained, and detained in the possession of the distrainer. (j)

Compensation with respect to impounding animals

[i] This sub-section empowers municipal councils to pass by-laws for restraining and regulating the running at large of animals, and under its provisions they have authority to require cows running at large to have bells attached to them.

A by-law passed under this sub-section, restraining and regulating the running at large of cattle within a municipality, should apply alike to the cattle of residents and non-residents. The council cannot legally discriminate against the cattle of non-residents.

A by-law passed by a township council under this section, prohibiting the running at large of cattle, horses, sheep, swine, or geese, and for impounding any animal running at large, was amended by a by-law, subsequently passed, whereby milch cows, heifers and steers under two years, were permitted to graze on the public high ways of the township, on payment of an annual fee of \$2 for each animal, such animal to have securely fastened thereon a tag furnished by the clerk at the township's expense, the township also furnishing a book to contain such registered numbers, all moneys received to be the common property of the township. It was held by Mr. Justice Rose, and a Divisional Court, that the amending by-law was valid ; that the sum named as a license fee was not excessive, and was merely for the purpose of meeting the expenses of carrying out the by-law, and not for raising a revenue ; and that the permission to graze on the highways was not *ultra vires* of the corporation. [Ross v. Township of East Nissouri, 1 O. R. 353.]

[j] By the common law all cattle are permitted to run at large on the public highway and are legally at large on the public highway and are legally at large on a highway of the municipality, until the council has passed a by-law pursuant to this sub-section restraining them from so doing.

Section 746b of The Consolidated Municipal Act, 1903, empowers the trustees of police villages to pass by-laws for the purposes mentioned in this section.

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